

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER W-172-98

WHEREAS, California should lead the nation in creating an optimum environment which affords all individuals and businesses equal access to the economic opportunities available in our diverse and powerful economy; and

WHEREAS, California Public Contract Code §10115 et seq. requires the state to award contracts only to bidders which contract or demonstrate good faith efforts to contract certain percentages of their work to businesses based on the race, gender, or disabled veteran status of the business owners; and

WHEREAS, awarding taxpayer-funded contracts on the basis of race and gender is discriminatory and in conflict with the fundamental principle of equal rights under the law upon which our richly diverse society must be based in both theory and practice if it is to prosper; and

WHEREAS, the Ninth Circuit Court of Appeals has determined in Monterey Mechanical Co. v. Wilson, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d. ___ (March 9, 1998), that the provisions of Public Contract Code §10115 et seq. requiring the achievement of minority and women business enterprise goals or good faith efforts to achieve the same are unconstitutional and violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, but did not address or invalidate the disabled veteran provisions of the statute; and

WHEREAS, Article III, section 3.5 of the California Constitution provides that administrative agencies may not refuse to enforce and administer state statutes on the basis of their being unconstitutional unless an appellate court determines such statutes to be unconstitutional; and

WHEREAS, the Ninth Circuit's decision in Monterey Mechanical Co. v. Wilson is such an appellate determination; and

WHEREAS, state government must ensure that its contract selection procedures safeguard against discrimination on the basis of race, sex, color, ethnicity, and national origin;

NOW, THEREFORE, I, PETE WILSON, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and the statutes of the State of California, do hereby issue this order to become effective immediately:

1. Every state agency, department, board, and commission shall cease any enforcement of the minority and women business enterprise participation goals and the good faith effort requirements related thereto under Public Contract Code §10115 et seq. with respect to any state contracts or amendments thereto awarded or entered, or proposed to be awarded or entered, on or after March 10, 1998.
2. All actions, programs, and regulations which seek to monitor, promote, or comply with the minority or women business enterprise goals or the good faith efforts related thereto under Public Contract Code §10115 et seq. shall no longer be administered and where appropriate, be repealed.

3. The requirements under Public Contract Code §10115 et seq. regarding participation goals and good faith efforts regarding disabled veteran business enterprises continue to be required by law and are not affected by this executive order.
4. Every state agency, department, board, and commission shall take appropriate steps to ensure that state contracting programs are administered in a manner which is free from discrimination on the basis of race, sex, color, ethnicity, and national origin.
5. Every state agency, department, board, or commission shall consider, and if appropriate, submit to the Governor's Office, any recommendations which will promote equal opportunity in state contracting for all individuals and businesses without regard to their race, sex, color, ethnicity, or national origin.
6. The Department of General Services shall provide, upon request technical assistance to state agencies, departments, boards, and commissions in complying with the requirements of this executive order.
7. State Constitutional Officers, the University of California, the California Community Colleges, and the State Board of Education are directed to take necessary action to comply with the intent and the requirements of this executive order.
8. Nothing in this executive order shall be construed to require any action that would result in the violation of a court order or a loss of eligibility for federal funding.

IN WITNESS WHEREOF I have hereunto set my hand and caused
the Great Seal of the State of
California to be affixed this 10th day of March 1998.

Governor of California

ATTEST:

Secretary of State